



Statement for the Record by Kids in Need of Defense (KIND)
“Oversight of the Department of Homeland Security”
U.S. House Committee on the Judiciary
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Kids in Need of Defense (KIND) is the leading national organization working to ensure that no child faces immigration court alone. KIND was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie. We have served more than 20,000 unaccompanied children in removal proceedings, trained over 57,000 attendees in pro bono representation of these children, and formed pro bono partnerships with over 700 corporations, law firms, law schools, and bar associations. KIND’s social services program facilitates the coordinated provision to unaccompanied children of counseling, educational support, medical care, and other services. KIND’s programs in Mexico and Central America work to address the root causes of forced migration and help protect the safety and well-being of migrant children at every phase of their migration journey.

Through this work, KIND has witnessed the many challenges confronting children in search of protection and the enduring importance of policies and legal safeguards in the U.S. immigration system to ensure their well-being, best interests, and fair access to protection. Many unaccompanied children have fled grave threats to their lives and safety in their countries of origin, including severe violence, abuse, and human trafficking. The perils facing children have only increased in recent years as a result of the COVID-19 pandemic, devastating natural disasters in Central America and Haiti, violence and conflict in many regions of the world, and actions such as the Title 42 policy that have blocked children and other protection seekers from requesting protection in the U.S. or expelled them to the very dangers they fled. Additional obstacles abound following a child’s arrival in the U.S., where they must navigate complex immigration proceedings and fight their deportation in order to obtain humanitarian protection, often without the assistance of an attorney.

Recognizing the particular vulnerability of unaccompanied children in the immigration system, a bipartisan Congress enacted the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA),¹ which provides legal and procedural protections to ensure that unaccompanied children are treated fairly and humanely, that they are able to make their legal cases, and that no child is returned to harm. These safeguards, together with critical standards provided by the *Flores* Settlement Agreement and developed over decades, reflect our nation’s commitment to treating migrant and refugee children as children first and foremost. They remain of paramount and lifesaving importance today.

As the Biden Administration prepares for safe and orderly processing at the border following the end of the Title 42 policy it faces a critical opportunity to implement practical and innovative solutions that can meet immediate needs while making progress toward transformative improvements to the care and treatment of children in the immigration system. Such reforms can help ensure the protection of children at *all* times—including by providing for children’s safe, humanitarian reception, care, and timely reunification with family in the U.S., and by ensuring counsel to help children navigate their legal cases.

We applaud key efforts the Biden Administration has taken to uphold and advance protections for unaccompanied and separated children. Critical among these are the Department of Homeland Security (DHS)’s work to implement the exemption of unaccompanied children from the Title 42 policy and to receive these exempted children consistent with the TVPRA. We similarly support DHS’ leadership of efforts to bring back together families who were forced apart under the prior Administration’s Zero Tolerance policy, including through the launch of the Interagency Task Force on the Reunification of Families and the reunification of more than 140

¹ William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

children with their parents, with hundreds more in process.² DHS also recently sought public input on ways to prevent future separations—a critical step toward creating policies that limit separations to those cases in which it is truly necessary to prevent danger to a child or for the child’s best interests. Other recent policy changes help to ensure unaccompanied children’s safety and wellbeing by considering deferred action and employment authorization for recipients of Special Immigrant Juvenile (SIJ) status who are awaiting visa numbers, as well as by restoring and expanding additional pathways to protection such as the Central American Minors (CAM) program.

Yet much work remains to create a system that prioritizes children’s rights and well-being at all points. To begin with, the administration must fulfill its aim to end the Title 42 policy—a misused measure that blocks many non-exempted children from accessing protection in the U.S. while exposing them to grave danger—as well as lift pandemic-related restrictions at ports of entry that prohibit unaccompanied children and other protection seekers from requesting humanitarian relief at official crossings. Together with these overdue changes, this statement highlights several practical recommendations that KIND urges DHS to implement as part of its broader plans to ensure safe, orderly and humane border processing in the immediate and long terms. These include: (1) hiring child welfare professionals at the border to oversee care in CBP facilities and facilitate compliance with the TVPRA; (2) co-locating HHS professionals at the border to expedite family reunifications and avert prolonged stays of children in government custody; and 3) implementing policies that ensure fair access to protection for children in proceedings, including through provision of legal counsel.

Unaccompanied children seeking protection at the Southwest border

During the past decade, increasing numbers of unaccompanied children have fled to the United States in search of safety and protection. In FY 2014, CBP encountered 68,541 unaccompanied children at the U.S.’ Southwest border.³ In FY 2019, numbers of unaccompanied children arriving increased to 80,634, and in FY 2021, CBP encountered 146,925 unaccompanied children.⁴ To date this fiscal year, more than 73,000 unaccompanied children have been encountered at the Southwest border.⁵

Numbers of unaccompanied children seeking protection in the U.S. reflect multiple, intersecting dynamics and factors, including an ongoing humanitarian crisis in the Central American countries of El Salvador, Guatemala, and Honduras. Widespread gang violence, sexual- and gender-based violence, corruption, poverty, natural disaster, and other dangers imperil the lives and safety of many children throughout the Northern Triangle of Central America, leaving many with no choice but to flee their countries to search for safety.⁶ The COVID-19 pandemic and the devastation caused by Hurricanes Iota and Eta in recent years only exacerbated dangers in the region.⁷ Humanitarian crises and political conflict and unrest in other parts of the world, including Haiti, Venezuela, Afghanistan, and Ukraine, have similarly forced children and families to flee in search of safety.

In recent years, the Title 42 policy--first implemented in March 2020--has led to more than 1.7 million expulsions of individuals arriving to the U.S., including unaccompanied children, without affording them a meaningful opportunity to request protection or providing them with vital legal protections and procedural safeguards set forth in U.S. and international law. These expulsions, coupled with related restrictions at U.S. ports of entry, have

² DHS, Interagency Task Force on the Reunification of Families, Interim Progress Report (Mar. 31, 2022), at 8, https://www.dhs.gov/sites/default/files/2022-04/22_0420_frtf-interim-progress-report-march-2022.pdf.

³ See Congressional Research Service, “Unaccompanied Alien Children: An Overview;” (Oct. 9, 2019), at 3, <https://fas.org/sgp/crs/homesec/R43599.pdf>.

⁴ CBP, Southwest Land Border Encounters, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>. Conducted data search using the terms “FY 19” for FY and “UC/Single Minors” under Demographic. The search was repeated for “FY 21.”

⁵ *Id.* (Conducted data search using the term “FY22” under FY and “UC/Single Minors” under Demographic.).

⁶ See Paula Dupraz-Dobias; “No easy solutions for tackling the Central American roots of the migration crisis” *The New Humanitarian* (Apr. 21, 2021); <https://www.thenewhumanitarian.org/analysis/2021/4/21/tackling-root-causes-of-migration-crisis-in-central-america>.

⁷ Kid in Need of Defense (KIND), Dual Crises: Gender-Based Violence and Inequality Facing Children and Women During the COVID-19 Pandemic in El Salvador, Guatemala, and Honduras (Dec. 2021), https://supportkind.org/wp-content/uploads/2021/12/KIND-GBV-Report_Final.pdf; Nicole Narea, “Migrants are heading north because Central America never recovered from last year’s hurricanes” *Vox* (Mar. 22, 2021); <https://www.vox.com/policy-and-politics/2021/3/22/22335816/border-crisis-migrant-hurricane-eta-iota>.

only compounded the perils confronting children and others in search of safety by forcing them to remain in danger, and they have contributed to significant bottlenecks at the border. Facing the same or worse dangers than those they initially fled, many children who were expelled or turned back under Title 42 have been left with no meaningful choice but to again request protection at the border, including after the Biden Administration exempted unaccompanied children from the Title 42 policy in February 2021.⁸

While processing of unaccompanied children consistent with the TVPRA has since largely resumed, KIND remains concerned that unaccompanied children could still be turned away or forced to undertake dangerous routes to safety as a result of confusion about or inconsistent application of entry restrictions or the Title 42 policy at the border. It is imperative that as the Administration winds down the Title 42 policy that it also fully lifts port of entry restrictions that have blocked protection seekers, including unaccompanied children. Additionally, KIND has serious concerns that unaccompanied children traveling with non-parental relatives, and Mexican children traveling alone, are not being screened and protected in accordance with federal law, including the TVPRA. Absent these required due process safeguards, which were enacted in recognition of unaccompanied children's particular vulnerability to exploitation, trafficking, and other threats, children may be returned to the very dangers they fled or to places in which they face pervasive violence or may be targeted for harm.

Importantly, ending the Title 42 policy and ensuring access to protection at ports of entry are only the first steps toward ensuring humane and orderly processing at the U.S.-Mexico border. The Biden Administration must also discontinue use of the "Remain in Mexico" policy that forces protection seekers to wait in dangerous, unstable conditions for their U.S. immigration proceedings.⁹ Although these policies remain the subject of ongoing litigation, DHS can and should immediately undertake practical reforms, including those detailed below, to strengthen the agency's capacity to respond to current and emerging needs and to ensure humanitarian reception of unaccompanied children and other protection seekers now and in the future.

Recommendations to Ensure Access to Protection and Humanitarian Reception of Unaccompanied Children

- ***Hire Child Welfare Professionals.*** Historically, children arriving to the U.S. have been held during initial processing in CBP facilities initially designed for use with single adults and that are ill suited to accommodate children's specific needs and appropriate care. These facilities are staffed by CBP agents and officers trained in law enforcement, rather than in the development, welfare, and care of children. While broader reforms are critical to ensure the humanitarian reception of children in child-appropriate spaces, DHS can take immediate steps toward improving care of children in government custody by hiring licensed child welfare professionals to oversee the care and screening of children in CBP facilities along the border. These professionals, who should be licensed in social work and have requisite training and experience in children's needs and development, can not only make sure that children's basic needs are provided for, but can also conduct screenings for protection needs as required by the TVPRA. By assuming responsibility for these care and screening functions, child welfare professionals would not only improve conditions for children but also ensure that CBP agents and officers are able to dedicate their time to the law enforcement functions for which they have received specialized training.

FY 2022 omnibus legislation provided \$14.55 million to DHS to hire licensed child welfare professionals at border facilities. It is critical that DHS promptly onboard these experts.

- ***Facilitate Co-Location of HHS professionals in CBP Facilities.*** Among the high numbers of unaccompanied children arriving at the border are many children who traveled to the U.S. with family members or caregivers such as aunt/uncles, grandparents, or adult siblings who are not their parents or legal guardians. These children meet the legal definition of an "unaccompanied alien child," as defined by the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of

⁸ Camilo Montoya-Galvez, U.S. will not expel unaccompanied migrant children under Trump-era policy now being reviewed" *CBS News* (Feb. 3, 2021); <https://www.cbsnews.com/news/migrant-children-biden-administration-will-not-expel-trump-policy/>; CDC, 86 Fed. Reg. 9942 (February 17, 2021).

⁹ See KIND, "Forced Apart: How the "Remain in Mexico" Policy Places Children in Danger and Separates Families (February 24, 2020); <https://supportkind.org/wp-content/uploads/2020/02/MPP-KIND-2.24updated-003.pdf>.

2008.¹⁰ Accordingly, they must be afforded all the procedural protections accompanying this status through the conclusion of their immigration proceedings. At the same time, however, DHS and ORR can ensure that children do not face prolonged custody in CBP or ORR facilities or unnecessary separation from loving caregivers by immediately commencing the family reunification process in CBP custody. Through the placement of HHS federal field specialists in CBP facilities, ORR could consider caregivers traveling with a child as potential sponsors and facilitate the simultaneous release of the child and caregiver together. HHS staff can also rapidly identify children with known vulnerabilities or special needs and ensure their initial placement in facilities best suited for their needs and similarly ensure that the process of identifying potential sponsors for all unaccompanied children begins as soon as possible. This reform would also reduce children's length of stay in CBP or ORR facilities.

The federal government recently demonstrated its capacity to deploy a coordinated co-location model through its reception of unaccompanied Afghan children at airports and military bases. The agency should identify improvements needed to refine and scale this approach and to adopt a similar model at points along the southern border at the earliest date possible.

- ***Undertake Broader Reforms to Create a Humanitarian Reception Model.*** Transforming the current reception system, which is rooted in a law enforcement approach, to one that puts at its core the best interests and welfare of children will require long-term commitment and vision from the federal government at large. Through engagement of a nongovernmental humanitarian actor DHS and HHS can help ensure the appropriate reception, screening, and care of children who arrive to the United States at or between ports of entry. DHS' engagement of the American Red Cross to assist with reception during a period of significant border arrivals in 2021 was an example of successful collaboration. Efforts to formalize a humanitarian reception model over the long term should continue beyond the current response and involve outreach to and engagement with nongovernmental humanitarian organizations.

A critical component of these efforts should include coordination across agencies to modify border facilities to ensure the availability of child-friendly spaces for temporary processing, designated areas in which children can be screened by child welfare professionals in a confidential and child-appropriate manner, basic hygiene accommodations, and meeting spaces for in-person Know Your Rights presentations and other legal assistance by nongovernmental organizations. In addition, DHS should work to improve accountability and oversight of CBP's compliance with legal requirements and standards in the TVPRA, *Flores*, and TEDS by providing for access to CBP facilities and monitoring by independent third parties, including nongovernmental organizations. The emphasis at all times must be on ensuring the welfare, best interests, and rights of children, minimizing detention, and ensuring the safe and swift reunification of children with sponsors.

- ***Ensure Fair Access to Protection and Expand Legal Representation for Unaccompanied Children.*** In addition to receiving children arriving to the U.S., DHS has a vital role in upholding children's rights and ability to seek protection and to have their legal cases fully and fairly heard, both in immigration court and before U.S. Citizenship and Immigration Services (USCIS). Many unaccompanied children have claims for humanitarian protection such as asylum, Special Immigrant Juvenile Status, or visas for victims of severe crimes or human trafficking. The TVPRA provides several procedural protections to assist children in navigating the immigration system, including an opportunity to have asylum claims first heard by USCIS in a non-adversarial asylum interview, rather than in immigration court, access to counsel through HHS, and exemption from the one-year filing deadline for asylum claims, among other protections.

Congress and the Biden Administration should prioritize the provision of legal representation to unaccompanied children in immigration proceedings. Despite their unique vulnerabilities in the immigration system, many if not most unaccompanied children lack an attorney to assist them in navigating immigration proceedings with the highest of stakes for their lives and safety. Government data illustrate that unaccompanied children without an attorney have virtually no meaningful chance of

¹⁰ Homeland Security Act of 2002, P.L. 107-296, 116 Stat. 2135 (Nov. 25, 2002); William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008) (TVPRA).

receiving a fair day in court: EOIR statistics on completed immigration court cases from FY 2018 through the first half of FY 2021 show that immigration judges were almost one hundred times more likely to grant legal relief to unaccompanied children with counsel than unaccompanied children without legal counsel.¹¹ Although ORR currently provides financial support to a network of nonprofit legal services providers to enable legal representation of unaccompanied children, current needs far exceed existing funding and allocation. As steadily high numbers of unaccompanied children arrive to the United States, this due process crisis will only expand unless Congress and the Administration prioritize measures to ensure that no child faces immigration court alone.

- ***Enhance bilateral coordination between U.S. and Mexican officials to ensure safe transfer of unaccompanied children to the U.S. when it is in their best interests.*** At times, Mexican child welfare authorities encounter migrant children who are in Mexico but who wish to reunite with family members in the United States and apply for protection there. When these authorities determine that it is in the child's best interest to do so, children should be safely transferred to the United States and reunified with U.S.-based family, where they can seek legal protection. The U.S. and Mexican governments must develop and implement formal mechanisms for the safe transfer of unaccompanied migrant children in these circumstances.

Conclusion

The Biden Administration has taken laudable actions to safely receive unprecedented numbers of unaccompanied children and to restore access to fundamental humanitarian protections denied to children in recent years. We are encouraged by DHS' commitment to the fair and humane treatment of unaccompanied children arriving to the U.S. and to compliance with critical protections for them, including those in the TVPRA and *Flores*. These efforts illustrate the federal government's capacity to work collaboratively and innovatively to manage border operations and to provide for humanitarian reception and treatment of vulnerable populations. We stand ready to work with DHS, Congress, and the whole of government to advance the Administration's efforts to ensure safe, orderly processing amid the termination of the Title 42 policy as well as to implement additional practical solutions that can aid the agency's preparedness and response in the immediate term while simultaneously setting the path for broader reforms that can ensure appropriate treatment of and fair access to protection for unaccompanied children--and all who arrive at the border--both now and in the future.

¹¹ KIND calculated this figure based on Executive Office for Immigration Review (EOIR) data published by the Congressional Research Service in its report titled "Unaccompanied Alien Children: An Overview, p. 16 (September 1, 2021), <https://sgp.fas.org/crs/homesecc/R43599.pdf>.